



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/062,959	01/30/2002	Donald L. Brodigan	20366-058010	3909

20350 7590 09/07/2005

TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

EXAMINER

DESIR, JEAN WICEL

ART UNIT PAPER NUMBER

2614

DATE MAILED: 09/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/062,959

Applicant(s)

BRODIGAN, DONALD L.

Examiner

Jean W. Désir

Art Unit

2614

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 6/13/05, Amendment.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11, 15-19 and 28-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 15-19 and 28-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-11, 15-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Aguayo, Jr. et al (US 6,285,856).

Claim 1:

“a host terminal (Figs. 1, 2 items 5, 85) coupled to the user drop (Figs. 1, 2 items 20, 90, 15(2), 95(4)) via the communication network”

“Wherein the host terminal is operable to: provide a test signal to the user drop; and authorize access to the test signal” see col. 7 lines 1-8;

“wherein authorizing access to the test signal is based at least in part upon receiving a network sign-on identifier via the user drop”, see col. 6 lines 6-16, col. 9 lines 22-39.

Claim 2 is inherent to Aguayo's disclosure, because of col. 8 lines 7-14, col. 3 lines 35-38.

Claim 3 is disclosed, see col. 10 lines 5-17.

Art Unit: 2614

Claim 4 is disclosed, see col. 8 lines 7-14, col. 10 lines 5-17.

Claim 5 is disclosed, see col. 9 lines 36-38.

Claim 6 is rejected for the same reasons as claim 1, because “measuring the test signal to determine the performance capability of the user drop” is also disclosed, see col. 9 lines 36-39, col. 6 lines 20-22.

Claim 7 is rejected for the same reasons as claim 1.

Claims 8, 9 are disclosed, see col. 8 lines 7-14, col. 10 lines 5-17.

Claim 10 is disclosed, see col. 8 lines 7-14.

Claim 11 is disclosed, see col. 10 lines 5-17.

Claim 15 is rejected for the same reasons as claim 6, because “wherein the signal comprises a first signal type and a second signal type” is also disclosed, see col. 8 lines 7-14, col. 10 lines 5-17.

Claim 16 is disclosed, see col. 6 lines 6-16, col. 9 lines 22-39.

Claim 17 is disclosed, see col. 8 lines 7-14, col. 10 lines 5-17.

Claim 18 is disclosed, see col. 8 lines 7-14.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aguayo, Jr. et al (US 6,285,856).

Claim 28:

The claimed "wherein the video signal comprises a MPEG video signal, and the network video signal source comprises an MPEG2 encoder" is not explicitly disclosed by Aguayo, because Aguayo does not explicitly disclose **MPEG** as claimed. However, Official Notice is taken that **MPEG**, as claimed, is a notoriously well known compression technique in the art that would result in reducing the size of video data; thus, an artisan at the time the invention was made would be motivated to modify Aguayo and implement the existing technique because it is readily available to the designer and it would result in reducing the size of video data so that it could be stored in less space or transmitted with less bandwidth. Therefore, the claimed invention would have been obvious to a person of ordinary skill in the art at the time the invention was made.

5. Claims 19, 29-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aguayo, Jr. et al (US 6,285,856) in view of the Background of the Invention.

Claim 19:

The claimed "wherein the communication network comprises a DSL-based video and data communication network" is not explicitly disclosed by Aguayo. However, Aguayo discloses a communication network comprises video and data communication network, except Aguayo does not explicitly say **DSL-based** video and data communication network; and **DSL-based** video and data communication network, as

Art Unit: 2614

claimed, is a notoriously well known architecture in the art (as evidence see the Background of the Invention page 1 lines 15-20, page 2 lines 19-22); thus, an artisan at the time the invention was made would be motivated to modify Aguayo and implement the existing architecture because it is readily available to the designer and it could advantageously provide a single platform for supporting bandwidth-intensive applications such as Internet access, video conferencing, and video-on-demand. Therefore, the claimed invention would have been obvious to a person of ordinary skill in the art at the time the invention was made.

Claims 29, 30 are disclosed, see Background of the Invention page 2 lines 13-18.

Claim 31 is disclosed, see Aguayo at col. 6 lines 1-13.

Claim 32 is disclosed, see Background of the Invention page 2 line 11.

Claim 33 is disclosed, see Background of the Invention page 2 lines 9-10.

Claim 34 is disclosed, see Background of the Invention page 2 line 17.

Claim 35 is disclosed, see Background of the Invention page 2 lines 16-17.

Claim 36 is disclosed, see Aguayo at col. 6 lines 1-13.

Claims 37, 38 are disclosed, see Aguayo at col. 8 lines 7-14, col. 10 lines 5-17.

Claim 39 is disclosed, see Aguayo at col. 8 lines 7-14.

Response to Arguments

6. Applicant's arguments have been fully considered but they are not persuasive.

Applicant argues on pages 8 and 9 of the REMARKS that "Aguayo does not disclose or suggest the transmission of a test signal)". These arguments are not

Art Unit: 2614

persuasive, Aguayo does disclose or suggest the transmission of a test signal, as claimed and as pointed out in the rejection; because Aguayo clearly defines a polling signal as a signal which can poll a particular unit **to determine its operational status** (see col. 6 lines 3-4, col. 5 lines 35-39, see col. 9 lines 36-39, for further elucidation); therefore, the polling signals transmitted by Aguayo are considered as test signals as claimed and as pointed out in the rejection. Applicant arguments are not persuasive; therefore, the rejection is maintained before the Office.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean W. Désir whose telephone number is (703) 308 95717344. The examiner can normally be reached on 5/4/9 - First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on (703) 305 4795/7353. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JWD
Sep. 3, 05



JOHN MILLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600